REMARKS

Claims 16 to 25 are pending. No claims are allowed.

The Office Action indicates that new matter was introduced because of the reference to the deposit. Claim 21 was also rejected under 35 USC 112, first paragraph, for this same reason. ATCC 58643 is described in Mendoza et al 30 2980-2983 (1992) as 574.85 or Costa Rica-H9. The Certificate of Deposit identifies the deposited strain ATCC 74446 with the same identifications. The deposits are of the same strain as evidenced by the enclosed Declaration Under 37 CFR 1.132 by the inventor. Thus this rejection is overcome.

Claims 16 to 25 were rejected under 35 USC 103(a) as being unpatentable over Mendoza et al (1996), Mendoza et al (1992(a); IDS Ref. AI), Mendoza et al (1992(b); IDS Ref. AJ), Panella et al (1990), Sigma Catalog (1992) and Amicon Catalog (1993). Applicant filed a Brief Under 37 CFR 1.192 detailing much of the Applicant's arguments in this matter and the Brief is incorporated by reference. The only new references are the Sigma catalog and the Amicon catalog, which, in Applicant's view, add little to the combination rejection.

The Examiner continues to make incorrect technical assertions in the Office Action.

(1) In discussing the cell mass vaccine at page 6 the statement is:

> "This step effectively separates and releases intracellular and extracellular proteins produced inside the cell from the cell material, and thus provides an admixture of intracellular and extracellular proteins."

This is incorrect technically.

(2) In discussing the SCAV vaccine at page 7, the Examiner in reference to the antigens expressed into the medium states:

> "This preparation [SCAV] thus comprises mixed intracellular and mixed extracellular proteins." []added

This is incorrect technically.

(3) In discussing the SCAV at page 7, the Examiner asserts the dialysis and the centrifugation are equivalent. This is incorrect.

In the enclosed Declaration Under 37 CFR 1.132 in reference to points 1 and 2, the Applicant details the reasons why the intracellular proteins are different from the extracellular proteins. The science which is expressed in the Declaration clearly defines why extracellular proteins are different than intracellular proteins.

In reference to point 3, centrifugation and dialysis are not equivalent. Centrifugation is not selective as to what is precipitated and small or low molecular molecules are retained in the precipitate.

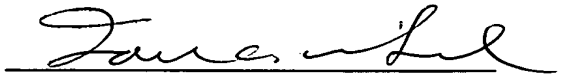
Dialysis removes low molecular weight soluble materials into a fluid from the retentate proteins by means of a moving fluid. Dialysis produces a much purer protein product. There is no assurance in centrifugation with PM-10 that thimersol would be removed. It is removed in dialysis.

The Examiner asserts at page 10 that it would be obvious to treat humans using knowledge of treatment of horses. This assertion has no basis in science. Horses and humans are only related in that they are mammals. It is well established in patent law that humans are different from lower mammals in reference to patentability unless there is a standard test which relates the two mammals. No such relationship has been established by the Examiner or for that matter anywhere in the art. It was a matter of great insight on the part of the Applicant to recognize that his vaccine could be used to treat humans for what is otherwise an invariably fatal disease.

The science in the Office Action is flawed as can be seen from the Declaration Under 37 CFR 1.132 and the earlier Declarations Under 37 CFR 1.132. The Sigma and Amicon references add little to the rejections from which Applicant appealed.

It is believed that the claims are in condition for allowance and Notice of Allowance is requested.

Respectfully,



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Encl. Declaration Under 37 CFR 1.132